**UNITED NATIONS** **E**

**Economic and Social Council**

Distr.
GENERAL

E/C.12/2001/SR.9
3 May 2001

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 27 April 2001, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of China: Hong Kong Special Administrative Region

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.01-41604 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of China: Hong Kong Special Administrative Region (E/1990/5/Add.43; E/C.12/Q/HKSAR/1; written replies to the list of issues prepared by the Government of China: Hong Kong Special Administrative Region (document without a reference number; HRI/CORE/1/Add.21/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of China: Hong Kong Special Administrative Region took places at the Committee table.

2. The CHAIRPERSON welcomed the recent ratification by China of the International Covenant on Economic, Social and Cultural Rights.

3. Mr. QIAO Zonghuai (China) said that in accordance with the stipulations of the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of China, the relevant provisions of the Covenant, which had been applicable to the HKSAR previously, had remained in force after 1 July 1997 and were implemented through the law of the Special Administrative Region.

4. China had ratified the Covenant on 28 February 2001, and it would enter into force on 27 June 2001. The ratification demonstrated China's serious commitment to the promotion and protection of human rights. Although it was not yet a party to the Covenant, in order to give effect to the principle of "one country, two systems" the Chinese Government had, through its permanent mission in Geneva, submitted to the Committee in 1999, the initial report prepared by the HKSAR on the implementation of the Covenant in Hong Kong so that the treaty bodies and the international community could acquire a better understanding of the human rights situation. Speaking as permanent representative of China to the United Nations Office at Geneva he wished the Committee success in its consideration of the HKSAR report, which he invited the head of the delegation to introduce.

5. Mr. LAM (China: Hong Kong Special Administrative Region), said that in 1996, when the delegation had last appeared before the Committee, many local and international observers had harboured anxieties about the prospect of the impending reunification of Hong Kong with China and its continuing obligation to submit reports to the Committee and the Human Rights Committee following the change of sovereignty. Any doubts in that regard should have subsequently been dispelled. Since 1996 the Hong Kong Special Administrative Region had weathered the storm of the Asian economic crisis. Although it had not gone unscathed, its unprecedently high unemployment levels had fallen from 6.3 per cent in mid-1999 to 4.6 per cent in the first quarter of 2001. A 10.5 per cent increase in real terms in GDP had also been recorded in 2000. Although Hong Kong's economic prosperity was well known to

all, and was due to strong local and international investment as well as to the determination of its people to build ever better lives for themselves and their families, poverty had not been fully eradicated. Indeed, the problem of low incomes was still endemic in some sectors of the community.

6. The Government had endeavoured to allow all citizens to benefit from economic growth and the poorer members of the community to raise themselves from poverty. That had been done through the provision of education and training and facilitation of the operation of free-market forces which had generated jobs and wealth for the population over the previous 50 years.

7. Although the reasons for poverty were complex, a central factor contributing to low incomes for certain sectors had been the inability of members of the community with little education or vocational training to fit into the continuous process of economic restructuring. With the development of knowledge-based industries, jobs for unskilled and semi-skilled workers were giving way to highly skilled and thus more costly professions. In addition, many employers had cut jobs to save costs during the Asian economic crisis, in particular for marginal labour. The rise in unemployment and underemployment had exacerbated the problems of poverty and low income. Job opportunities were, however, expected to improve with economic recovery

8. The Government had resolved to tackle the issue of poverty at its roots. In a policy address in October 2000 the Chief Executive had emphasized that education policy was at the very core of Hong Kong's social policy and that the most important long-term social investment was in education. Total expenditure in that area currently amounted to 4.25 per cent of GDP, an increase of 43 per cent over the pre-unification level. Additional subsidized school places would be provided to enable more young people to complete full secondary education and professional diploma and sub-degree courses would be expanded over the next 10 years to enable 60 per cent of senior secondary school leavers to receive tertiary education. It was also the Government's belief that the low-skilled workers and unemployed, who might have received little education, would benefit from some degree of formal instruction. Secondary education would therefore be provided for those already in the labour force, who would also receive focused training to enable them to upgrade their skills.

9. At the same time, the Government had sought to provide additional employment opportunities through public investment, without compromising the principle of market economics. More was being invested in services for patients, single-parent families, the elderly, the infirm and disabled, which would help to expand the labour market in the service sector. Investment would also be accelerated in worthwhile infrastructure projects such as those relating to the environment. In general terms, however, it was clear that only employment opportunities created by sustained economic growth would endure.

10. The Hong Kong Government recognized that the problems of poverty and low income needed also to be addressed in more immediate ways. Direct assistance was provided through the Comprehensive Social Security Assistance (CSSA) Scheme, and the housing, health care, welfare, education and rehabilitation programmes also provided social wages for the economically disadvantaged.

11. With reference to the Committee's statement on "Globalization and Economic, Social and Cultural Rights", published in May 1998, Hong Kong had long been a globalized economic entity whose life blood had been international trade. It was within that context that social and economic policies had been developed and there was no question of their being compromised in the interests of international trading conditions.

12. In its General Comments, the Committee had emphasized the importance of the progressive implementation of the Covenant. Since parties were therefore presumably expected to demonstrate in the reporting procedure the progress they had made towards that end, it was important to underline a number of areas in which advances had been made since the delegation had last appeared before the Committee. Firstly, with regard to article 3 of the Covenant, a Women's Commission had been established to work out a long-term strategy for the development and advancement of women, to advise the Government on policies and initiatives that concerned women, and to enable women to realize fully their due status, rights and opportunities.

13. As to article 11 (1) of the Covenant, it was pleasing to note that the number of households with inadequate accommodation had fallen from 10.3 per cent in 1995 to 6.3 per cent in 2000. All families currently living in temporary housing areas, cottage areas and squatter areas would be moved to public rental housing or Home Ownership estates by the end of 2001. Further, the average waiting time for public rental housing had nearly halved in the previous decade. Two pledges had also been made to improve housing for elderly people: those who had applied before March 2001 would be rehoused before the end of 2003, and the average waiting time for elderly single persons seeking public rental housing would be reduced to two years by 2005. Finally, a wide range of measures, at a cost of HK$ 500 million, had been taken to help new immigrants from mainland China to integrate and adapt to life in Hong Kong.

14. In regard to reservations and declarations under the Covenant, certain changes would be taking effect as of 27 June 2001. The declaration in respect of article 1 and the reservation to article 7 concerning equal pay for men and women for equal work in the private sector would cease to apply. The former reservation to article 8 concerning the right of trade unions to form federations within the HKSAR and to affiliate with workers', employers' and professional organizations in foreign countries would be replaced by an interpretative declaration. The reservation to article 6 would, however, continue to apply in order to provide the Government with flexibility in formulating measures to protect the interests and employment opportunities of workers.

15. The HKSAR wished to reiterate its firm commitment to progressively achieving full realization of the rights enshrined in the Covenant. Although it had not yet implemented all the Committee's recommendations, he believed that significant improvements had been made since the previous report.

16. Mr. RIEDEL welcomed the decision to withdraw the reservations to articles 1 and 7 of the Covenant. With regard to article 8, however, it would have been preferable to withdraw the reservation rather than introduce an interpretative declaration which, although possible under international law, reserved the right to an alternative interpretation of a treaty obligation while acknowledging that a different interpretation existed in the international context. Article 6 of the

Covenant had been drafted so that the 145 States parties thereto could carry out their obligations, without expressing any reservation in regard to fundamental human rights. The reservation to article 6 should be withdrawn since the flexibility argument would, if applied generally to all States, negate the fundamental aim of the Covenant provisions.

17. Mr. SADI emphasized that the "one country, two systems" principle, unique and complex as it was, could easily lead to an uneasy relationship between two systems that appeared diametrically opposed in economic terms. For example, the perspective on poverty and unemployment in Hong Kong would differ widely from that prevailing in mainland China, since it was conditioned by market forces. What was the delegation's assessment on a scale from 1 to 10, of how well the relationship was working, what problems had been encountered, and what were the prospects for the future?

18. Mr. AHMED said that many positive phenomena were to be observed in Hong Kong, for example the fact that its financial reserve of US$ 20 billion had doubled since 1997. The success of the HKSAR was important to China and indeed the whole world. Although he did not wish to detract from what had been achieved, he stressed, in a spirit of constructive criticism, that if complete success was to be attained it was time for the HKSAR to move away from policies designed to produce economic prosperity towards the development of a more socially equitable society. That would enable the country to be viewed in a more positive light on an international level and as a humane society rather than one governed by the rules of economics. Greater attention should be paid to the issue of discrimination against women and foreign workers, the disabled, homosexuals and the mentally ill. Of particular importance was the problem of family reunification, epitomized by the 200,000 children in China whose parents lived in Hong Kong. They should be treated in a more humane manner and be reunited, if only on a gradual basis, with their parents.

19. Perhaps equally significant was the more general problem of housing. The existence of squats and slums was incongruous in the context of overall economic prosperity. Likewise, the problems of older persons, who were often destitute, should be dealt with as a matter of urgency within the overall transition towards greater social equality.

20. Mr. WIMER ZAMBRANO expressed admiration for the power and economic dynamism of the HKSAR as well as its cosmopolitan character. However, the large number of different ethnic groups, represented, while coexisting, were often strictly separate. Did the Government have any plans to improve the integration of ethnic groups into the different strata of society?

21. Mr. LAM (China: Hong Kong Special Administrative Region), responding to the question raised by Mr. Sadi, said that it was difficult to assess the success of the "one country, two systems" principle in quantitative terms. Over the past four years, the relationship between the two had been a happy, successful and positive one. That was particularly noteworthy since, up to 1997, considerable anxiety had been expressed that things would change in the HKSAR following reunification. Nevertheless, Hong Kong remained an open, free, dynamic and cosmopolitan society. The Basic Law had been fully implemented and the mainland had not

interfered at all in internal policies and administration. It had also been very cooperative in regard to foreign affairs. The success that had been achieved by the HKSAR could be seen most clearly by Committee members if they were to visit the island, where evidence of the degree of autonomy was readily apparent.

22. In answer to Mr. Ahmed, he said that the HKSAR still had weaknesses but that the proposed transition from an essentially economic framework to a more socially equitable structure had already begun. That applied particularly to housing, since half of the population lived in subsidized accommodation. Problems in relation to cage homes and squats did still exist, but it had become possible for an average middle-income family to purchase their own flat with suitable facilities. A further considerable achievement was that working class families could obtain flats only three to four years after applying for them. Similar improvements had been pledged in respect of elderly people who had applied for public housing. He stressed that such problems were being tackled by the use of tax revenues. Notwithstanding, Mr. Ahmed's concern was understandable since, although the HKSAR had a per capita GDP of US$ 23,000, poverty and inadequate housing were still visible and the Government would have to work harder to raise people's living standards.

23. Replying to the question put by Mr. Wimer Zambrano, he said that Hong Kong had long had a substantial non-Chinese ethnic community. The authorities had chosen not to plan specific integration measures on the grounds that Hong Kong was a very free and uninhibited society. However, there were many schemes to assist and provide facilities for low-income immigrant groups in particular, thereby helping them integrate into the local population.

24. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to the observations of Mr. Riedel, explained that the first part of the interpretative provision entered by the Chinese Government in relation to article 8 of the Covenant stated that the right of trade unions to establish national federations or confederations should be interpreted as referring to the HKSAR in order to reflect the fact that Hong Kong was not a nation but part of a larger entity. He did not believe that the provision materially restricted the right. The second part stated that the right of federations or confederations to form or join international trade union organizations did not imply the right to form or join political organizations established outside the HKSAR. The right to join legitimate trade union organizations was certainly guaranteed.

25. With regard to article 6 of the Covenant, a reservation permitting the formulation of employment restrictions in respect of place of birth or residential qualifications had been retained by the Chinese Government. People from outside were permitted to enter Hong Kong for specific employment, but in certain cases restrictions were placed on the possibility of their changing employment or employer in order to protect employment opportunities for local workers.

26. The CHAIRPERSON invited members to comment on items 1 to 3 of the list of issues.

27. Mr. PILLAY said it was not clear to him whether all the rights enshrined in the Covenant were justiciable or merely regarded as statements of intent. As pointed out in paragraph 53 of the core document, under Hong Kong's dual system an international treaty was not self-executing but had to be incorporated by specific legislation. Why had that been done for the

Covenant on Civil and Political Rights but not for the Covenant on Economic, Social and Cultural Rights? In particular, was there specific legislation incorporating the provision against discrimination? He understood there was no such legislation in the private sector. The General Comments of the Committee had made it abundantly clear that all rights enshrined in the Covenant were justiciable and some, including the right to freedom from discrimination on grounds of race and status, must be applied immediately.

28. Mr. MALINVERNI drew attention to paragraph 3 of the initial report (document E/1990/5/Add.43) which invoked article 2, paragraph 1 of the Covenant to justify its non-incorporation into domestic legislation. As Mr. Pillay had pointed out, some of the provisions were directly applicable, which implied that the Covenant had to be incorporated into domestic law, so the explanation in the report was not entirely satisfactory.

29. According to the reply given to question 1 on the list of issues, in the event of more than one possible interpretation of the domestic law, preference should be given to the law which was compatible with international law. But what happened when no possible interpretation under internal law conformed with international law? To which was preference given?

30. Mr. TEXIER observed that China's ratification of the Covenant, which he welcomed, had eliminated a particular legal problem for the Committee. Noting that the reservations made to several articles under the British administration had been reduced to one, on article 8, under the Chinese administration, he asked what the delegation expected of ratification by China.

31. Turning to the jurisprudential aspect of the incorporation of the Covenant into domestic law, he said he had been surprised at a court ruling cited in the written replies according to which the international instruments invoked by the applicants (the two Covenants and the Convention on the Rights of the Child) did not oblige the Government to give right of permanent residence to a child adopted outside the territory by a permanent resident. Did the delegation believe that current immigration laws were sufficient guarantee of the right to family life recognized by the two Covenants and other international instruments?

32. Mr. RIEDEL welcomed the HKSAR report's extensive treatment of the Committee's previous concluding observations. He was not convinced, however, by the argument that there was no immediate need for a human rights commission as the rule of law was fully assured by Hong Kong's constitutional arrangements. Within the United Nations system and according to the Paris Principles, a national human rights commission was considered a desideratum. Presumably, an appeal from the Hong Kong Court of Final Appeal would currently lie with the Standing Committee of the National People's Congress in Beijing, making it an administrative or executive matter, and the rule of law, which was fully guaranteed within Hong Kong, might thus be bypassed. If that assessment were correct, would it not be expedient and help promote public awareness to have a human rights commission dealing specifically with the provisions of human rights treaties to which Hong Kong was party?

33. Mr. THAPALIA also wanted to know, against the background of repeated allegations of discrimination of all kinds and in the light of the concerns expressed by the Committee in the past, why there was no relevant law or competent monitoring body. Could the delegation outline the measures being taken or envisaged by the authorities to eliminate discrimination de jure and de facto and say what progress had been achieved in the previous five years?

34. Mr. SADI observed that the status of the Covenant appeared still to be in doubt. Referring to the obligation laid on the authorities by article 23 of the Basic Law to enact legislation on sedition and subversion which could conceivably touch on trade union and academic freedoms, he asked, if such legislation was in conflict with the Covenant, which text would enjoy supremacy. Secondly, could the delegation be as reassuring about the status of the views of the Committee as they had been regarding the relevance and effectiveness of the Covenant itself?

35. Mr. HUNT commended the authorities and civil society in Hong Kong on the seriousness with which they had approached the reporting process, which had been greatly enhanced as a consequence. Further to the argument advanced by Mr. Riedel, he considered that a comprehensive human rights institution was especially important for economic, social and cultural rights as they were not as well known or understood as civil and political rights. That was true of most jurisdictions. In the absence of such an institution, what were the authorities doing to promote better awareness and understanding?

36. The judge in two recent cases, Justice Cheung, had referred to the Covenant as "promotional in nature", which did not correspond to the Committee's understanding of its status. With an independent judiciary, the authorities were clearly not responsible for the judge's statement. But, had the authorities, being parties to both cases, argued in court that the Covenant was purely promotional?

37. Mr. CEAUSU said he understood that under the terms of the Sino-British Joint Declaration Hong Kong's social and economic systems were to remain unchanged for 50 years. But if China had already ratified more international instruments in the field of human rights, for example, on discrimination, than those ratified by the British authorities on the territory's behalf, surely it was time steps were taken to apply any such legislation mutatis mutandis to the HKSAR.

38. Mr. GRISSA asked whether, now that China had ratified the Covenant, Hong Kong would continue to report separately.

39. Mr. LAM (China: Hong Kong Special Administrative Region), responding to questions from Committee members regarding the Covenant's place in Hong Kong's domestic legislation, said that the Hong Kong Government saw its obligations under the Covenant as an essential duty. It had many times pledged openly that it would take steps, to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the Covenant, and it would continue to strive towards that end.

40. In answer to Committee members' concerns about the lack of a national human rights institution, he said that Hong Kong had such a tight network of legal institutions, as well as a large number of sophisticated NGOs, that there was little room for the Government to abuse rights explicitly. It might have erred unwittingly, but the Bill of Rights and the Basic Law made it clear that the authorities must abide by those legal requirements and principles. He believed Hong Kong had a good record: the Government's own cases had on occasion been thrown out by its own courts. The point had often been made that taking that last step of establishing a national human rights institution would be a great achievement for Hong Kong; the Government would continue to listen to such views and to those of Committee members, particularly when particular weaknesses were pointed out.

41. In answer to Mr. Texier's first question, he said that, since Hong Kong had been a party to the Covenant for some time and its obligations under the Covenant were spelled out in the Basic Law, constitutionally and legally speaking China's ratification of the Covenant would have no effect on Hong Kong's own obligations.

42. On the possibility of extending some of China's legislation to the HKSAR, he said that, under the "one country, two systems" principle, Hong Kong's legislation was primarily its own business and only in certain areas, such as defence, that fell outside the limits of its autonomy, was extension of China's legislation possible.

43. Referring to Mr. Sadi's question concerning article 23 of the Basic Law, he said that the Human Rights Unit of the Department of Justice vetted all proposed legislation and policy to ensure its compatibility with Hong Kong's international treaty obligations and its advice was taken seriously.

44. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), responding to a question from Mr. Hunt regarding the domestic application of the Covenant, said that the Government, following the Committee's General Comment No. 9, accepted that there was no Covenant right that could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions and also that some Covenant rights were immediately applicable. The question was how those rights should be incorporated into domestic law. According to General Comment No. 9, the precise method was a matter for each State party, but there would have to be a strong justification for using a method that differed significantly from those used in relation to other human rights treaties.

45. Hong Kong had brought the provisions of the International Covenant on Civil and Political Rights into its domestic law by various constitutional and legal methods, but not by direct incorporation of the Covenant. The Government's position was that, although the International Covenant on Economic, Social and Cultural Rights was not an identical case, it was similar, and some of the rights in the Covenant were constitutionally guaranteed under the Basic Law, while there existed some 100 ordinances protecting Covenant rights in law, as shown in annex 3 to the initial report.

46. In response to the question by Mr. Malinverni, he said that new (i.e. post-reunification) legislation could be challenged in the courts under the Basic Law, article 39, if it appeared to be inconsistent with the Covenant.

47. In response to Mr. Texier's question on the Government's reply to item 1 in the list of issues, he said that the question of whether Hong Kong's immigration law recognized the Covenant rights, in particular the right to family life, was complicated by the fact that Hong Kong had entered reservations to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which meant that the law could not be challenged on the grounds of inconsistency with those instruments. However, it had entered no such reservation to the Covenant on Economic, Social and Cultural Rights, which meant that arguments were still taking place in the courts on the questions of whether immigration law could be challenged on the grounds that it violated the right to family life, how far government officials must take Covenant rights into account when making administrative decisions, and to what extent a member of the public had a legitimate expectation that they would in fact be taken into account.

48. Referring to Mr. Riedel's question, he said there was no right of appeal to the Standing Committee of the National People's Congress in the sense of an application for a change in a judgment in a specific case as it affected the parties. The Standing Committee had the power to interpret national law, and did so very exceptionally, but that interpretation would not affect the judgment in a previously decided case as far as the parties were concerned.

49. In answer to Mr. Hunt's question about whether the Government had argued in court that the Covenant was "promotional in nature", he said that there were various views on the matter but he could not say precisely what argument had been put by the Government.

50. Mr. LAM (China: Hong Kong Special Administrative Region), replying to the question from Mr. Grissa, said that Hong Kong would continue to be the subject of a separate report to the Committee, but that that report would be submitted at the same time as China's own report.

51. Mr. PILLAY said he was glad to hear that the Human Rights Unit vetted proposed legislation for compatibility with the Covenant, but what of legislation that ought to be but was not enacted? The Covenant's provisions on discrimination, for example, were susceptible of immediate implementation, so why had no legislation been enacted against discrimination on grounds of race or of sexual orientation? Paragraph 13 of the report referred to studies that had found that more than 80 per cent of people were opposed to anti-discrimination legislation but that all of them supported the use of educational means to address the issues. Why not use those educational means to inform people of Hong Kong's obligations?

52. Mr. HUNT noted that there were cases currently before the courts in which it was being argued that the Covenant aroused legitimate expectations that should be taken into account in the exercise of discretionary powers. Referring to Australian and New Zealand case law on legitimate expectation, he asked what the Authority's legal position was on the matter. Did it take the view that the Covenant gave rise to legitimate expectation for those within its jurisdiction?

53. Following up a previous question, he asked who had responsibility for promoting awareness of human rights in the absence of a national human rights commission.

54. Mr. LAM (China: Hong Kong Special Administrative Region) said it was up to the relevant authorities to promote rights such as the right to health or to education. It was they who had to formulate and champion improvements in social policy. Economic, social and cultural rights, specifically, were publicized by the Home Affairs Bureau through, for example, television messages, posters and booklets.

55. Mr. ALLCOCK (China: Hong Kong Special Administrative Region) said that the only cases to raise the question of legitimate expectation to date had concerned the right to family life and often related to the enforcement of immigration law in the case of illegal overstayers. Generally speaking, an international obligation was one the Government had undertaken at international level, but the accepted common-law position was that such obligations were binding only to the extent that they had been incorporated into domestic law. The argument that people had a legitimate expectation that all Covenant rights would be immediately implemented by the Government tended to blur the distinction between the international and domestic arenas. The Government was therefore arguing in such cases that there was no legitimate expectation that Covenant rights would be taken into account when decisions were made.

56. Mr. PILLAY said the delegation appeared to be trying to evade the issue by arguing that there was no legitimate expectation that Covenant rights would be applied if there was no domestic law specifically incorporating those rights. That argument itself implied that domestic law had not incorporated all the Covenant rights, which was the very point he had been trying to make: were all the Covenant rights incorporated by constitutional, legislative or administrative means into domestic law?

57. Mr. ALLCOCK (China: Hong Kong Special Administrative Region) said the discussion related specifically to immigration law, which was one area where it was accepted that the right to family life might not be fully protected in Hong Kong law. The problem of split families was a particularly difficult one for Hong Kong. Measures were in place to allow the orderly arrival of people from split families but the community could not cope with the influx if they all arrived at the same time. It was for that very reason that Hong Kong had entered reservations to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

58. The CHAIRPERSON invited committee members' questions on items 4 to 7 on the list of issues.

59. Mr. MALINVERNI, referring to paragraph 13 of the report, asked for clarification of the status of the surveys that had been conducted on anti-discrimination legislation. How many people had been interviewed, for example? He also wondered whether the legislature should refuse to legislate on such fundamental issues as discrimination merely because it appeared that people did not want it to do so.

60. Mr. CEAUSU said he shared those concerns and believed that decisions by a State party to implement the provisions of the Covenant should not be influenced by the opinion of certain groups who could not claim to represent the majority of the population. When Governments undertook a course of action in fulfilment of international obligations freely entered into they should not be dissuaded by public opinion. The high proportion of anti-legislation submissions

made on pre-printed forms, as mentioned in the reply to item 4 on the list of issues, suggested that pressure from certain sectors of the population had played a significant role and that a campaign had been organized by a particular lobby. Similarly in Romania, for example, the Orthodox Church had vehemently opposed the decriminalization of homosexuality.

61. It would be preferable for the two types of discrimination, based on race and sexual orientation, to be addressed separately. By linking them in the opinion polls, the authorities were creating an additional obstacle and affording an opportunity for stronger opposition to the elimination of racial discrimination.

62. Ms. BARAHONA-RIERA said that the creation of the Women's Commission referred to in the delegation's introduction represented a great leap forward. However, she wondered what degree of financial autonomy it enjoyed and what social and political sectors and nationalities were represented on it. How did it plan to make itself representative of all ethnic groups? What capacity did it have to ensure that its recommendations were incorporated into the Government's various social, economic and cultural plans? Lastly, she wished to know what legal instruments would be at its disposal to recommend amendments to the legislation so as effectively to guarantee the inclusion of a gender perspective in Hong Kong's legal framework.

63. Mr. TEXIER said that while the HKSAR was not a party to the Geneva Convention relating to the Status of Refugees or its 1967 Protocol, that situation would change with China's accession to it. He was concerned about the discrimination inherent in the fact that most persons seeking refugee status in the HKSAR were Vietnamese and that, while their treatment was consistent with the provisions of the Geneva Convention, that was not the case for refugees from other countries. Did the authorities plan to amend the legislation so as to afford the latter the same access to economic, social and cultural rights as Vietnamese refugees?

64. Mr. SADI asked the delegation whether the Court of Final Appeal's unanimous ruling that a child born in China to Hong Kong residents had the right of abode in the HKSAR did not discriminate against those born to residents of other countries.

65. Mr. TEXIER asked at what cost unemployment had been reduced to 6 per cent, a much lower figure than in Latin America and some European countries. Could it be that workers' guarantees were not respected? The Committee had noted in its concluding observations on the report concerning Hong Kong submitted in 1996 that the unemployment rate then prevailing was the result of economic restructuring. Since the economy was presumably still being restructured, he hoped that the unemployment rate was not being kept down through the ad hoc recruitment of untrained workers.

66. He asked what guarantees existed with regard to workers' hours. Information in the Committee's possession suggested that some worked extremely long hours, often as much as 15 hours at a stretch. While article 7 did not stipulate a specific number of working hours, it made it abundantly clear that a reasonable maximum was required. He also wished to know whether the legislation guaranteed workers a minimum wage that allowed them and their families to enjoy a decent standard of living. It was alarming that in an affluent society like Hong Kong a worker could earn a daily wage equivalent to US$ 1 for 14 hours, as recently reported in Hong Kong's South China Morning Post.

67. Lastly, were employers free to dismiss any worker at will? Or was there some monitoring system to ensure that dismissals were justified by consistently poor performance or legitimate economic reasons?

68. Mr. GRISSA asked what rights to social security, to a fair minimum wage and to reasonable working hours were enjoyed by the 217,000 foreign domestic workers in Hong Kong, two thirds of them from the Philippines. What was their actual status? He took exception to the term "imported workers" used in the report, as though such people were manufactured goods. Were they then "re-exported" at the end of their contracts?

69. Mr. RIEDEL cited the written reply to item 12 of the list of issues to the effect that the authorities had held consultations with the Committee on Occupational Safety and Health (COSH) of the tripartite Labour Advisory Board, and that which divergent views had been expressed by the employers' and employees' representatives as to the manner in which rest breaks in the workplace should be regulated. The matter had been deferred for further consideration. However, article 7 (d) of the Covenant explicitly stated that it was an obligation of States parties to provide for adequate working conditions and reasonable working hours. Given their duty to protect, it was incumbent upon States parties to ensure that steps were taken to enact suitable legislation. What was the Government doing to ensure implementation of those provisions?

70. Mr. HUNT pointed out that article 7, subparagraph (a) (i) was equally germane to the issue and asked what the Government was doing to meet its obligation under that article to provide for "fair wages and equal remuneration for work of equal value without distinction of any kind". He had understood that, contrary to the explanation given in section 11 of the written replies, it was not the Equal Opportunities Commission (EOC), but the study submitted to it, that had recommended that equal pay should be promoted through persuasion rather than legislation. It was disturbing that such an important issue as the explicit obligation established in article 7 (a) (i), should be, as the Government claimed, addressed through the Sex Discrimination Ordinance (SDO). What time-frame did the authorities envisage for introducing specific legislation on equal pay for equal work? If no legislation was on the agenda, what was it doing to uphold that right?

71. Mr. PILLAY, referring to article 6, drew attention to the long-standing practice in the HKSAR of excluding relatives of the mentally ill from recruitment to the disciplined forces on the ground that they might be susceptible to a similar condition. Yet, the courts had recently outlawed that practice in a case concerning recruitment to the Fire Services and Customs and Excise Departments. Could the delegation give assurances that such discrimination would be effectively banned?

72. Mr. CEAUSU noted that in its written replies the State party had sought to justify the absence of legislation on the minimum wage on the grounds that Hong Kong had a free-market system and that labour terms should be negotiated directly with the employer and set forth in a contract freely drawn up between employer and employee. The free-market status had also been invoked to explain the absence of legislation concerning working hours. Yet, other free-market

countries had decided to regulate working conditions by legislation in order to keep pace with changing circumstances and had also legislated for considerably reduced working hours. He recommended that the HKSAR should emulate them in both those regards, as was incumbent on all States parties.

73. Mr. TEXIER said that, there being no minimum wage in Hong Kong, it was a fiction to suggest that the employer-employee relationship was one of equality. The only way to avoid the worker being always at a disadvantage when wages were determined was to legislate or to introduce collective bargaining. The same was true of the grounds on which workers could be dismissed. Regarding equal pay for equal work, according to Hong Kong trade union sources, a woman working in the manufacturing sector earned HKS 90 a day - much less than a man in the same job. There, too, a legal framework was called for.

74. Mr. SADI asked whether part-time workers, mainly women, were not hired in order to cut labour costs. He was amazed at the unlimited number of hours worked and the inhuman treatment of workers, who sometimes were not given time off for meals. Such treatment was outdated; he hoped that the authorities would take the necessary action.

75. Ms. BARAHONA-RIERA observed that protection of the right to equal pay for men and women existed only in case law, since there was no legislation on the subject. That being so, what provision could a perceived victim of gender discrimination invoke? She asked whether the Government had any policies regarding discrimination in access to work and whether it was considering legislation to combat discrimination against women in labour contracts. Also, what action were the authorities taking to eliminate the physical and other types of abuse to which many foreign domestic workers were subjected?

The meeting rose at 1 p.m.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/2001/SR.10
26 June 2001

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 10th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 27 April 2001, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of China: Hong Kong Special Administrative Region (continued)

* No summary record was prepared for the first part (closed) of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.01-41627 (E) 130601 260601

The meeting was called to order at 3 p.m.

The second part (public) of the meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of China: Hong Kong Special Administrative Region (continued) (E/1990/5/Add.43; E/C.12/Q/HKSAR; E/C.12/CA/HKSAR; written replies to the list of issues prepared by the Government of China: Hong Kong Special Administrative Region (document without a reference number); HRI/CORE/1/Add.21/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of China: Hong Kong Special Administrative Region (HKSAR) resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to reply to the questions left pending on articles 2-7 of the Covenant.

3. Mr. LAM (China: Hong Kong Special Administrative Region) said Hong Kong as yet had no anti-racial discrimination law, but comprehensive consultations were shortly to be arranged on the issue in the Legislative Council, with the participation of non-governmental organizations (NGOs). However, given the fierce opposition to the adoption of such a law, the authorities favoured the course of dialogue. Since discrimination based on sexual preference - having to do with the essential moral values handed down by society - was a highly sensitive topic, no further public consultations on the matter were envisaged for the time being.

4. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to a question on Hong Kong's possible accession to the Convention relating to the Status of Refugees, explained that while the HKSAR concurred on the spirit of that instrument, its special situation made accession difficult. The territory's economic prosperity would almost certainly attract hordes of asylum-seekers and could lead to abuses. Over a quarter of a century Hong Kong had taken in some 200,000 Vietnamese refugees on humanitarian grounds, and over 140,000 of them had subsequently resettled abroad.

5. Turning to possible discriminatory acts concerning the right of abode, of which children born in mainland China might be victims, he explained that the Immigration Ordinance provided that the right of abode in the HKSAR was accorded any Chinese national, born in mainland China or elsewhere, provided that one parent was a Chinese national residing permanently in Hong Kong. Before being allowed into the territory, persons born in mainland China and claiming the right of abode in the HKSAR must procure an affidavit attesting to that right and a travel document issued by the mainland Chinese authorities: 700,000 residence authorizations had been issued prior to the return of Hong Kong to China and 2,000 subsequently. The

establishment of that mechanism was justified by the very large number of children born in mainland China of parents residing permanently in Hong Kong and by the territory's demographic problems.

6. The allegedly discriminatory recruitment policy pursued by the Fire Services and Customs and Excise Departments, namely, the ban on recruitment of relatives of the mentally disabled, no longer applied in view of the Disability Discrimination Ordinance and in the wake of a judicial ruling ordering its discontinuance.

7. Mr. LAM (China: Hong Kong Special Administrative Region) said laws designed to protect workers had been passed, but that any improvement of the legislation in that field must take account of the local economic situation. For many years NGOs and trade unions had been pressing for legislation on a minimum wage and statutory maximum working hours. As it was, Hong Kong owed its prosperity throughout the second half of the twentieth century to its extremely flexible labour market, and although workers had certainly suffered from that policy in 1999 and 2000, they too had enjoyed the fruits of economic growth. While the issue of a fixed minimum wage and legal maximum working time was still topical, the Government considered it impolitic to legislate on the matter for the time being, in view of the Asian financial crisis that had shaken the territory's economy.

8. Ms. NG (China: Hong Kong Special Administrative Region), replying to a question on the unemployment rate, said it had been relatively low - between 2 and 3 per cent - before the 1997 Asian financial crisis. In 1999 it had reached a record 6.3 per cent, which, however, was still reasonable compared with unemployment rates in Europe and Latin America. It had stood at 4.5 per cent during the first quarter of 2001. Although everything pointed to a rise in workers' incomes since the Asian financial crisis, the Government's absolute priority was to combat unemployment. A high-level expert group formed in 1998 had studied possible ways of reducing unemployment and boosting the economy. Chaired by the Financial Secretary and composed of academics, members of trade unions and employers, the group had compiled a list of some 40 measures, including continued training and job programmes for young people. Since unskilled workers were the hardest hit by unemployment, the Government had recently earmarked $400 million for a worker-training programme, which should benefit 50,000 unskilled workers, since projections had shown that there would be some 150,000 surplus unskilled workers on the labour market by 2005.

9. During the fourth quarter of 2000 wage-earners in the Hong Kong Special Administrative Region had worked an average of 48 hours a week, or approximately 8.7 hours a day, over five and one half days. While those figures were high compared to those of the market-economy countries that had opted for shorter working hours, they were within the average range for most Asian countries. The authorities believed that, as with wages, the number of hours worked should be negotiated on an individual basis between employer and employee. The Government was currently investigating practice in that field with a view to regulating that aspect of labour. It would furnish the Committee with additional information on the topic in due course. In the event of abuses, the Labour Department prosecuted the delinquent employer.

10. The workforce was an important feature of Hong Kong, being that entirely outward-looking economy's sole resource. It must be capable of adapting if it was to react

promptly to fluctuations in job supply and demand in a changing economic environment. In order to help employees remain competitive and to permit them to re-enter the labour market in the event of dismissal, the authorities emphasized programmes of training and upgrading, which, in their view, had the advantage of affording wage-earners more protection than would a minimum wage. The one exception to that rule was the fixed minimum monthly wage of US$ 470 for foreign domestic workers; the purpose of that provision, which was subject to annual review in the light of the economic situation, was to protect that category of highly vulnerable workers from exploitation. Labour law also guaranteed those domestic workers the same rights as local workers, except that they were not allowed to change jobs as they pleased.

11. New provisions had been inserted in the Employment Ordinance, authorizing wage-earners to file complaints against their employers if they felt they had been unfairly dismissed. The Labour Tribunal could then order the worker's reinstatement, or sentence the employer to pay compensation for dismissal, or even damages of up to HK$ 150,000. In conclusion, the law treated any dismissal on grounds of trade-union membership as a punishable violation.

12. Ms. WONG (China: Hong Kong Special Administrative Region) said that, on the recommendation of the Committee on the Elimination of Discrimination against Women, the HKSAR had established a Women's Commission to develop a long-term strategy for the development and advancement of women, to advise the Government on relevant issues and to enable women fully to realize their human rights in all aspects of life. To that end, the Commission's work focused on five major areas, namely strategic planning, advisory services, education, liaison and research. An independent advisory body, the Commission had 23 members, 5 of them very senior officials serving ex officio to render Government support to the Commission's work. The other members came from a wide range of backgrounds and all had extensive experience in the field. The Commission was also assisted by the Equal Opportunities Commission, responsible for promoting equal opportunities for men and women.

13. Mr. LAM (China: Hong Kong Special Administrative Region) said the authorities were well aware of the importance of enforcing the principle of "equal pay for work of equal value" and that many studies on the subject had been conducted to that end. Although the Equal Opportunities Commission endeavoured to sensitize employers to that principle, it was an area in which it was difficult to legislate. The Sex Discrimination Ordinance was a first step in that direction, banning as it did all such acts in any field whatsoever, including that of employment. He recognized that, as had been suggested, it would indeed be judicious to have a law dealing exclusively with discrimination in employment.

14. Mr. GRISSA asked the delegation for additional information on the question of foreign domestic workers. What did US$ 460 represent on the local market and how much did local staff doing the same job earn? If foreign employees could not change jobs, what happened to them when they were dismissed or their contract expired? Were they expelled from Hong Kong? Could they claim social security or seek reimbursement of pension contributions? Were their rights protected?

15. Mr. AHMED, basing his remarks on information provided by the Equal Opportunities Commission, said many women had lost their jobs as a result of the relocation of businesses to

the neighbouring mainland. Heads of businesses also took steps to cut wage costs, including recruitment of mostly female part-time staff. The wage policy overtly discriminated against such employees: women earned 77 per cent of men's pay for work of equal value, with the 45-49 age group earning as little as 58 per cent. He had it on good authority that the Commission had been criticized for its passivity and its propensity to promote conciliation over judicial action when the latter would appear to be indicated. Could the Government not be a little more resolute in its fight against sex discrimination?

16. Mr. TEXIER remarked that, where hours worked were concerned, it was important for the Committee to learn not so much the average number of hours worked by Hong Kong wage-earners but the bases on which that average was calculated, so as to underscore abuses. For if legislation in that area was necessary, it was partly because safety considerations dictated the importance of not exceeding a certain number of hours per day and per week, and because overtime needed to be remunerated at a higher rate, ranging from 25 per cent to 50 per cent of the hourly rate, depending on the number of hours involved.

17. With regard to discriminatory dismissals, it would appear that despite the provisions authorizing wage-earners to seek redress in the courts, none had ever won such a case, owing to lack of evidence. A law recently enacted in France concerning discrimination on the grounds of trade-union activities, and discrimination against women had reversed the burden of proof: the onus was no longer on workers to prove that they had been discriminated against, but on the employer to prove that no discriminatory subterfuge had been used. Could the Hong Kong Special Administrative Region perhaps emulate that law?

18. Mr. HUNT said he was deeply disappointed at the Hong Kong authorities' failure to make a firm commitment to ban racial discrimination in the private sector. At the dawn of the twenty-first century and, more particularly, only months away from the World Conference Against Racism, such a commitment was hardly an unreasonable expectation, in view of Hong Kong's obligations under international law in general and the Covenant in particular.

19. Mr. MARTYNOV pointed out that, according to the delegation, the average working week was 40 hours. However, the document submitted by the trade unions showed that in the last quarter of 2000 over 600,000 employees, in other words 20 per cent of the active population, had worked at least 60 hours a week. Could the delegation explain the discrepancy? He had also heard that the expulsion of foreign workers from Hong Kong once they had lost their jobs deterred them from lodging an official complaint in the event that their rights had been violated. Had the Government put in place an oversight and inspection system to ensure respect for the rights of such workers? Lastly, some employees on permanent contract allegedly worked weeks on end without a rest day, in contravention of the Employment Ordinance. Did the Government have the means to verify those allegations and the will to take the necessary measures?

20. The CHAIRPERSON, speaking as a member of the Committee, said she understood that the Women's Commission was to be placed under the aegis of the Department of Health and Social Welfare, a move that could cast doubt on its independence. Moreover, in her statement on that Commission Ms. Wong had spoken a great deal about activities, but not enough about

orientation. More than activities, what Hong Kong women needed was an improvement in their status and greater participation in decision-making concerning them. The Commission must not be a mere figurehead, as was the case in other countries.

21. Ms. WONG (China: Hong Kong Special Administrative Region) explained that one of the Commission's tasks was precisely to ensure that women's views were taken into account in the framing of all policies concerning them. The Commission was also responsible for promoting women's rights, a task it performed with total independence. The Department of Health and Social Welfare would simply provide the Commission with secretariat services, an arrangement that existed in other fields and had always been entirely satisfactory.

22. Mr. LAM (China: Hong Kong Special Administrative Region) said he understood Mr. Hunt's disappointment but assured him that there was a real will to go forward with the fight against racial discrimination in the private sector. However, the authorities could not legislate against the public's wishes. It was better to begin by convincing public opinion that a change of attitude was needed and to go on from there to enact the relevant laws.

23. Ms. NG (China: Hong Kong Special Administrative Region) pointed out that the minimum wage of foreign domestic workers was HK$ 3,860, or about US$ 470, approximately two thirds the wage of their local counterparts. It should be noted, however, that employers were also required to provide board and lodging for their foreign domestic staff and subsidize their medical expenses. The Government reviewed the minimum wage each year and decided whether it needed to be adjusted.

24. Concerning the fate of foreigners who lost their jobs, she stressed that the policy on the admission of foreign workers and domestic staff into Hong Kong showed the Government's will to protect local jobs. Foreigners were allowed into Hong Kong to perform specific jobs and could not change employers without approval from the immigration authorities. If they felt they were exploited or their rights were violated they could apply to the immigration authorities for an extension of their stay. In any event, the labour legislation afforded foreign domestic workers the same protection as locals. In that connection, the Labour Department had installed a hotline that foreign workers could use to obtain information or to complain about any violation of their rights.

25. Regarding the length of working hours, she did not challenge the figures provided by the NGOs, but insisted that the average for the fourth quarter of 2000 had been 48 hours a week, which was close to the averages for other Asian countries. Also, it was for the employer and employee to negotiate a special overtime bonus. With regard to part-time work, a Government study conducted early in 1999 had shown that there were 30,000 part-time employees - people working fewer than 18 hours a week - or about 1 per cent of all wage-earners. Aware of the upward trend in the number of part-time workers, the Government was carefully monitoring the situation in an effort to protect employee interests.

26. Mr. MARTYNOV said he was pleased to note that the Government was endeavouring to fill the gaps in legislation which allowed employers to bend the rules by excessive recourse to

part-time employment. However, there remained the question of the violation of the right of workers to a mandatory rest period and, in that regard, a mandatory overtime bonus would be an effective solujtion.

Articles 8, 9 and 10 of the Covenant

27. The CHAIRPERSON invited Committee members to put their questions concerning articles 8, 9 and 10 of the Covenant.

28. Mr. WIMER ZAMBRANO asked whether, like the "one country, two systems" principle, it would not be equally valid to talk of "one country, two types of trade union". In that connection, what legal and practical relations did Hong Kong trade unions maintain with those in other countries and in China in particular?

29. Mr. TEXIER said that, in preparation for Hong Kong's return to China, laws providing a juridical framework satisfactory to the trade unions and bringing Hong Kong legislation into line with the ILO Conventions had been adopted in April 1997. However, on 29 October 1997 the Provisional Legislative Council had repealed the most important clauses of those laws, reverting to the previous legislation, which had been fiercely criticized by ILO. The repealed provisions concerned recognition of the right to collective bargaining and the right of trade unions to be consulted, as well as the right to reinstatement of workers dismissed on the grounds of their trade union activities. Although improvements had since been made, the legal provisions relating to collective bargaining neither met ILO expectations nor were in keeping with the spirit of article 8 of the Covenant. While the Basic Law protected the right to strike, no text actually guaranteed its effective exercise if an employee could still be dismissed for going on strike. In those circumstances, could the delegation maintain that the administration respected the ILO Convention on freedom of association and article 8 of the Covenant?

30. Mr. MARCHÁN ROMERO said he would like to know whether domestic workers were in fact excluded from the new compulsory social welfare scheme that had come into effect in December 2000. If so, were they covered by any other social security scheme? What happened to the elderly and the disabled?

31. Mr. HUNT asked whether persons who had been refused the right of abode could appeal. Would it be possible to publish, on a regular basis, information on the place of origin of mainland Chinese granted the right of abode under article 24 of the Basic Law?

32. Mr. RIEDEL said that a ban on abode for at least eight years after marriage, which affected wives from mainland China, contravened article 10, paragraph 3, of the Covenant. Children who, were it not for that ban, would be born in Hong Kong came into the world on the mainland and as a result were subsequently refused the right of abode. Given the low birth rate in Hong Kong, would it not be wise to review that policy? He referred in particular to 3,700 children with permanent residence status, whose right of abode had been recognized in June 1999.

33. Mr. HUNT asked how many children with permanent residence status who had gone to Hong Kong before June 1999 for purposes of family reunification would also be granted the right of abode.

34. Mr. ATANGANA asked the delegation to cite specific cases in which victims of domestic violence had brought an action against their spouses in the courts. Also, what were the main causes of suicide among minors and what methods did they use?

35. The CHAIRPERSON, speaking as a Committee member, expressed dismay that the Department of Health and Social Welfare, on which the Women's Commission depended, was also responsible for the Commission for the Elderly and the Youth Commission. She doubted whether the Commission's action could be very effective given the many problems with which the other two Commissions were faced. She wished to know what was specifically being done to curb the alarming increase in the child suicide rate and the growing number of cases of child abuse, especially sexual abuse. Regarding the status of women, it was important to adopt a more comprehensive approach to gender-equality issues than simply asking women about their problems.

36. Ms. NG (China: Hong Kong Special Administrative Region) replied that the Hong Kong trade unions were free to join international confederations, but that the authorities possessed no statistics or detailed information on how many had done so. Regarding labour legislation, the three ordinances that had been hastily passed prior to Hong Kong's return to China had been repealed by the Government after their examination by the tripartite Labour Advisory Board. New legislation had been adopted, containing those provisions not rejected by the Board. Establishment of a compulsory collective bargaining system was still a highly controversial issue in Hong Kong. In 1999 the Legislative Council had rejected a proposal along those lines. Concerning the right to strike, guaranteed by the Basic Law, the amendment to the Labour Ordinance approved in 2000 clearly stipulated that striking could not serve as grounds for dismissal.

37. She confirmed that domestic workers were not covered by the new social welfare scheme that had come into effect in December 2000. The authorities believed that to extend the scheme to domestic staff would give rise to administrative problems, particularly since the workplace was the employer's home. Nevertheless, they had already made known their intention to review the functioning of the system within a year or two and, if necessary, to enable other categories such as domestic employees to join it.

38. Ms. WONG (China: Hong Kong Special Administrative Region) said that the Women's Commission had been created only in January 2001 and that all Committee members' suggestions designed to assist it to accomplish its task were welcome. The Commission was supposed to ensure that women's concerns were taken into account in the framing of policies and laws. It was currently drawing up a list of questions which all Government offices and departments would be required to answer when they came to formulate their policies, which would require a good understanding of gender-equality issues on the part of those responsible. To that end, it was collaborating with a local research centre on the subject in order to familiarize officials with those questions. It was working on producing data disaggregated by gender.

The meeting rose at 6 p.m.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/2001/SR.11
8 May 2001

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 30 April 2001, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of China: Hong Kong Special Administrative Region (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.01-41619 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of China: Hong Kong Special Administrative Region (E/1990/5/Add.43; E/C.12/Q/HKSAR/1; written replies to the list of issues prepared by the Government of China: Hong Kong Special Administrative Region (document without a reference number); HRI/CORE/1/Add.21/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the delegation of China, Hong Kong Special Administrative Region resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to respond to questions outstanding from the 10th meeting of the Committee relating to items 22 to 26 of the list of issues.

3. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to questions by Mr. Riedel and Mr. Hunt, said that the Hong Kong authorities shared the Committee's concern about split families and welcomed its suggestions. The main split family scenarios in Hong Kong were: a family established in the mainland and one parent, typically the father, leaving on account of better economic prospects in Hong Kong; or a Hong Kong resident visiting the mainland regularly and starting a family there while continuing to reside and work in Hong Kong. The authorities were trying to deal with the problem sensitively and fairly, but Hong Kong was a small and densely populated region and could not possibly cope with unrestricted immigration from the mainland, even for the purposes of family reunion. The authorities had to strike a balance between the right to family life of split families and the economic, social and cultural rights of existing Hong Kong residents by facilitating family reunion at the highest rate with which the infrastructure and resources could cope and ensuring that split families were reunited through a fair, orderly and transparent mechanism.

4. As far as the entry of mainlanders to Hong Kong was concerned, family reunion was the most important aspect of immigration policy, implemented through a number of schemes. Under the system of the one-way permit, issued by the mainland authorities under the Basic Law, some 4,500 mainland residents were currently admitted to Hong Kong for settlement each month, representing an intake of 0.8 per cent of the population, higher than equivalent figures for many Western countries with far more space than Hong Kong. Since 1997 over 200,000 one-way permit holders had entered Hong Kong, including over 90,000 children and over 80,000 previously separated spouses. Members of split families awaiting settlement could visit Hong Kong under two schemes: the two-way permit system under which residents of Guangdong Province could visit Hong Kong twice annually for up to three months per visit; and the group tour scheme for which the current quota was 1,500 visits per day. Problems arose with the administration of those schemes when persons on visits decided to stay. Removal orders were often challenged by recourse to judicial review, and it was in that context that the question

of the right to family life and legitimate expectations arose. The authorities took the view in general that people who came on visits should not take advantage of the system to jump the queue of those waiting to enter on one-way permits.

5. He confirmed, in reply to a question by Mr. Hunt, that there was an appeal process concerning the right of abode. Under the immigration ordinance, any person aggrieved by a decision of the Director of Immigration or served with a removal order might appeal to the Immigration Tribunal and the order could not be executed pending the hearing of the appeal.

6. He hoped that the schemes outlined had demonstrated both the justiciability of the rights concerned in Hong Kong and the strength of the rule of law. Meanwhile, steps had been taken towards achieving a more transparent and hence fair application process. For example, the mainland authorities had introduced a system of points awarded to applicants in accordance with published criteria, and since 2000 a list of successful applicants for one-way permits had been published daily in a Hong Kong newspaper, including information on the place of application in the mainland. Newspaper articles appeared at intervals explaining the points system and providing information about a complaints hotline.

7. Turning to a question put by Mr. Riedel, he explained that the Court of Final Appeal, in its original decision of January 1999, had decided that children had the right of abode in Hong Kong if one of their parents was a permanent resident, even if that status had been acquired after the birth of the child. Subsequently, the Standing Committee of the National People's Congress had decided that the right of abode existed only if one parent had been a permanent resident at the time of the child's birth. The question was how many people should continue to benefit from the original decision of the Court. The Hong Kong authorities recognized three categories, totalling 3,700 persons, based on the interpretation by the Standing Committee that the parties to the original proceedings before the Court of Final Appeal should not be affected, but that all others should. The crucial issue then was who had been the parties to those proceedings. The view of the authorities had been challenged in court by 5,000 applicants. The case had been heard by the Court of Final Appeal, but judgement was still awaited. If the Court ruled against the authorities, the number of persons qualifying for right of abode would have to be recalculated, but he could not say, as Mr. Hunt had requested, what the result would be. The authorities' position was certainly not intended to be limiting, as Mr. Riedel had suggested, but an honest application of the decision of the Standing Committee.

8. In reply to Mr. Riedel's suggestion that under Hong Kong's policy mainland resident spouses were generally not permitted to come to Hong Kong for at least eight years after marriage, he said no such policy existed. Eight thousand separated spouses had been granted one-way permits since reunification.

9. Mr. WONG (China: Hong Kong Special Administrative Region), replying to questions by Mr. Atangana and Mr. Grissa, said that the number of reported cases of domestic violence had ranged from 1,200 to 2,000 per annum over the previous three years. Reported cases were followed up by the Social Welfare Department and the police, who would investigate and prosecute where appropriate. The causes of domestic violence were no different from those in other jurisdictions and included family disputes, personality problems of the abusers and

interpersonal problems. In addition to conducting public education and information programmes and providing preventive counselling and support services to victims, the police and the Social Welfare Department had strengthened training in the handling of cases of domestic violence. Revised procedures for the police also focused on victim care and arrangements for referral to social services. Non-governmental organizations had been invited to conduct training courses for front-line officers. Under the Domestic Violence Ordinance, the molested party might apply for a restraining order from the court. Depending on the nature and seriousness of the violence involved, the criminal system was oriented to protecting the victims. Charges ranging from common assault to rape might be brought. He confirmed that marital rape was an offence under the existing law. Concerns had been raised about the clarity of the law, and the authorities, in consultation with appropriate NGOs and the legal profession, were currently considering whether the legislation should be amended, and if so how. Meanwhile, police officers, social welfare departments, NGOs and women's groups had been reminded that a man who forced his wife to have sexual intercourse with him was liable to be convicted of rape.

10. Various measures were in place to afford the victims of sexual offences protection under procedural law, including the options of providing evidence to the police by video recording and of giving evidence in court through a closed circuit television link, and provision of assistance to victims by specialist task forces set up in the police force and Social Welfare Department. Furthermore, under the law of evidence, the corroboration rule had been abolished in June 2000 so that abusers could now be convicted on the evidence of the victims alone.

11. Thanking the Committee members for their views and suggestions, he said that the authorities would set up working groups to consider what further improvements could be made to the existing laws and administrative measures relating to sexual violence and victim support.

12. Ms. WONG (China: Hong Kong Special Administrative Region), responding to a question put by the Chairperson at the previous meeting, said that registered cases of child abuse had risen from 381 in 1997, including 146 cases of sexual abuse, to 500 cases in 2000, including 150 of sexual abuse. The causes determined included inadequate parenting, behavioural and psychological problems of children, personality and psychological problems of carers and parents, and poor parental relationships. The authorities were determined to tackle the problem at the root by preventive measures, including publicity and public education programmes and early intervention in at-risk families, and a range of support services including dedicated units in the police and social welfare services. The authorities would keep their legislative and administrative measures under constant review. A bill had been introduced to strengthen existing controls over child pornography and combat child-sex tourism. A working group was to be set up on victim support schemes covering inter alia victims of child abuse.

13. Notwithstanding the drop in the number of cases of child suicide and attempted suicide since 1996/97, the authorities were not complacent. The causes included unrealistic expectations on the part of parents, inadequate social support at times of crisis, inadequate problem-solving skills and inadequate emotion-management skills. Outlining the range of measures in place to deal with the problems, she said that the authorities would keep the statistics and programmes under constant review.

14. Mr. SADI said that, if he was correct in concluding that the determination of who benefited from the one-way and two-way permit schemes was effectively in the hands of mainland China, he would like to know what role Hong Kong played in that process, to what extent the criteria for determination were consistent with the Covenant and other related human rights, and how the schemes related to people in similar situations not in mainland China?

15. On domestic violence and child abuse, he observed that unreported cases might far exceed those reported. Further, would the delegation agree that housing conditions could be a contributory factor to domestic violence? Referring to item 26 of the written replies, which stated that "two persons aged between 7 and 15 were convicted of offences relating to prostitution", he expressed surprise that such young children could be convicted. He hoped the information was incorrect. Lastly, he took issue with the suggestion that the psychological disorders of children themselves were among the reasons for child abuse, since children were not responsible for, but suffered from, such disorders as a result of the conditions in which they were raised.

16. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to Mr. Sadi's questions about permits, confirmed that the Hong Kong authorities had no material influence on the criteria according to which one-way and two-way permits were issued. However the Chinese and Hong Kong authorities conferred on certain applications for one-way permits and certificates of entitlement in the interest of efficiency. He believed that the criteria were consistent with the Covenant and other human rights to the extent that they were fair and equitable within the constraints he had mentioned. He confirmed that the permit systems were designed for people from mainland China and did not concern people from other parts of the world.

17. Mr. WONG (China: Hong Kong Special Administrative Region) said that the concern expressed by Mr. Sadi over the minimum age of criminal responsibility in Hong Kong, currently seven years, had been raised by the legal profession and the community at large. However, if a child below the age of 14 was charged with a criminal offence, evidence had to be adduced that the child had known that what he or she was doing was wrong. The authorities were considering whether to raise the minimum age in the light of recommendations by the Law Reform Commission. He hoped to be able to report on further developments at the next hearing.

18. Ms. WONG (China: Hong Kong Special Administrative Region), also replying to Mr. Sadi, did not rule out the possibility of underreporting of cases of domestic violence and child abuse. The authorities were committed to raising public awareness of the problem and encouraging victims to come forward. She explained that psychological and behavioural problems in children cited as a cause of abuse referred to children who abused other children.

19. Ms. CHUNG (China: Hong Kong Special Administrative Region), responding to Mr. Sadi's question on housing, said that improvements in that area were helping to reduce the possibility of child abuse. Hong Kong had formulated a long-term housing strategy in 1997/1998. Since then, the number of inadequately accommodated households had been reduced by one third, despite immigration levels of 150 per day; much inadequate housing and many squatter areas had been cleared; the waiting period for public housing had been halved and

would be reduced to three years by 2003; and rents had been frozen at the 1998 level. Total expenditure on housing over the past five years had been US$ 28.63 billion and between 13 per cent and 18 per cent of total public spending went on housing.

20. There were of course still problems, a major one being competing demands. Following a review of priorities, families were no longer given the same preference as in the past and initiatives had been introduced that benefited single persons, the elderly and new immigrants. Lastly, there had been a shift away from a "bricks-and-mortar" policy of directly providing accommodation to one of providing loans to applicants.

21. Mr. TEXIER noted that, in its concluding observations of 1996, the Committee had referred to the problem of "cage homes" as a blight on the housing situation in Hong Kong and had recommended their total eradication. What was the situation now in that regard? He wondered if the State party would agree with NGO figures showing that there were about a million people living in approximately 280,000 inadequate dwellings and some 2,000 single people still living in "cage homes".

22. The CHAIRPERSON invited Committee members' comments on articles 11 to 15 of the Covenant.

23. Mr. WIMER said that there was a highly organized squatters' movement in Hong Kong, which exploited any empty space in high-rise buildings. Indeed, the existence of empty buildings in urban areas where space was at a premium gave an ideological boost to the movement. What was the delegation's assessment of the size and importance of the movement and what was the Government's attitude and policy towards it? Was it viewed as a social phenomenon and problem or as a question of juvenile delinquency?

24. Mr. ATANGANA requested details of the current situation with regard to the application of the "small house policy" to indigenous women, who at the time of writing of the initial report had not benefited from it (E/1990/5/Add.43, para. 411).

25. Mr. AHMED said that a number of NGOs had urged the Committee to underline the importance of court decisions in safeguarding fundamental rights and freedoms - including economic, social and cultural rights - in Hong Kong, given that there was no fully-elected legislature chosen by universal suffrage and a lack of effective checks and balances.

26. He drew attention to an article by a senior member of Human Rights Watch, published in the International Herald Tribune of 28-29 April 2000, which raised two questions relevant to the question of the rule of law in Hong Kong: how the authorities should deal with the Falun Gong meditation group and how they should respond to China's detention of Hong Kong-based academics. President Jiang Zemin of China was to visit Hong Kong on 8 May 2001 and it was expected that Falun Gong members would hold protest rallies. According to the article, the Chief Administrative Officer of Hong Kong had described Falun Gong in hostile terms and said protests would be unacceptable. However, Mr. Allcock, the Solicitor-General, had said "There is no pressure to use article 23 against Falun Gong"; the group was "legal in Hong Kong so long as they abide by Hong Kong's laws". Many NGOs were worried that legislation would be conjured up specifically for the occasion, making even peaceful rallies by Falun Gong

subversive activities. Freedom of expression was guaranteed under the Basic Law and he hoped that the rule of law would not be undermined by what happened, since that could tarnish Hong Kong's image.

27. The article also referred to two scholars, Mr. Xu Zerong and Mr. Li Shaomin, detained on the mainland in August 2000 and February 2001 respectively, without explanation. As disturbing as the arbitrary detentions was the fact that the Hong Kong authorities had apparently not bothered to make any inquiries as to why the academics had been arrested and why they were being held incommunicado.

28. The article raised relevant questions. If the authorities were powerless to prevent arbitrary arrest, for example, that would pose a serious challenge to the "one country, two systems" idea. Academic and business exchanges were vital if Hong Kong was to continue to prosper and to help drive China's development. With China about to join the World Trade Organization (WTO), Hong Kong's role was more crucial than ever as an example of how free markets, civil liberties and the rule of law could thrive together.

29. He hoped the delegation would be able to provide satisfactory answers to those questions: it was not simply a matter of the two individuals concerned or of Falun Gong itself, but of the image of Hong Kong as a peace-loving, democratic State that respected human rights, and the success of the "one country, two systems" experiment.

30. Mr. MALINVERNI, referring to the Government's reply to item 27 on the list of issues, said that Hong Kong had no official definition of poverty and did not recognize an official poverty line. The Government criticized NGOs' definitions of poverty but offered no alternative. NGO documents showed a worrying increase of nearly 30 per cent in the number of elderly poor between 1996 and 1999. Currently one in four elderly people was poor. What insurance coverage did the elderly have? What criteria were used in allocating preferential housing (report, paras. 375 ff) and providing a meals service (report, para. 304) to the elderly?

31. Mr. THAPALIA, referring to a number of NGO and media reports, said that, with a per capita GDP of US$ 24,540 per annum and 1.3 million people, or one sixth of the population, living in poverty, Hong Kong had the world's most inequitable income distribution. The most vulnerable groups were immigrants from mainland China and migrant workers from the Indian subcontinent. In addition, Hong Kong had no minimum wage, and in February 2001, it had been revealed that homeless people, or "street sleepers", had been hired at derisory wage-rates to clean public conveniences. The Chief Administrative Officer had been criticized for refusing to set a poverty line and his undertaking, given in October 2000, to spend 2.7 billion Hong Kong dollars over two years to address the widening gap between the rich and the poor had been considered short-sighted, since it did not tackle the root of the problem.

32. Against that background, he asked what categories of person were officially recognized as low-income groups, what income the most vulnerable of them might earn and what their daily calorie intake was. What institution was responsible for monitoring poverty? Lastly, he asked whether the children of migrant workers had access to universal compulsory primary education and what proportion of absentees they accounted for in the education system.

33. Mr. GRISSA said that Hong Kong had one of the world's highest life expectancies and a good health service. There was, however, a great deal of movement in and out of other areas in the Far East where AIDS was rapidly gaining ground. In the statistical annex to the report, the Government had given a figure of 1,542 HIV-infected persons, but a simple round figure of 500 with full-blown AIDS. How accurate were the statistics? He also wondered what the incidence of death from AIDS was and what treatment was given to AIDS sufferers: were they cared for by public health services or was it left to their families to look after them?

34. Mr. MARCHÁN ROMERO, referring to article 15 of the Covenant, noted that Hong Kong had established the Information Technology and Broadcasting Bureau in 1998 to formulate policy on telecommunications and promote the wider use of information technology (report, para. 618). However, it was clear from recent information supplied by Hong Kong's Census and Statistics Department that persons with disabilities were far less likely than the able-bodied to have access to the Internet, for example. As had been said at the Summit of the Americas held recently in Quebec, it was important to provide access to information technology at an equal rate for all. What was the Government doing to widen access to such technologies for the disabled, in particular, and also for women?

35. Mr. PILLAY, referring to article 12 of the Covenant, asked how the Government met the health needs of vulnerable and marginalized groups such as the poor, the elderly and those with disabilities. He understood that there were plans to introduce a health-care system based on earnings-related contributions. Would the Government contribute on behalf of those who had no paid employment, such as homemakers and the disabled?

36. It appeared that the mentally ill in Hong Kong were not getting the treatment they deserved. Not only were they treated, in some cases, with old medicines, which had a bad effect on their physical health, but also the prevailing culture tended to view the mentally ill as a burden and an embarrassment. Referring to the Committee's recommendations of 1996 in that regard, he asked what progress had been achieved since then.

37. Recalling the Government's admission that the core content of the Covenant was enforceable and must be taken into account, he wondered what status it gave the Committee's recommendations generally: were they taken seriously or regarded as mere statements of intent with no requirement for immediate implementation?

38. Mr. CEAUSU noted that, according to paragraphs 418 and 419 of the report, the authorities prioritized the prevention of AIDS and care for sufferers. For care to be provided, cases needed to be detected, yet footnote 3 to paragraph 418 gave only a broad estimate of the number of people infected. Why were no precise, reliable figures available? Were cases not reported because of doubts about confidentiality, for example? He requested more details concerning the policy guidelines mentioned in paragraph 422 of the report.

39. Paragraphs 461 and 462 of the report appeared to contain contradictions. In some cases where allegations of negligence were not borne out, the causes of death or injury were apparently "organizational failure" and "human error", including "carelessness" and "lack of knowledge", which would seem to amount in effect to negligence. He wondered why the very hospitals or doctors alleged to be at fault were given responsibility for carrying out the investigation in such

cases. Thus in one serious accident referred to in the report it had been unwise for the hospital concerned to be assigned the task of investigating it and reporting to the Department of Health, when what was needed in such cases was an independent, impartial investigation. The complaint investigation mechanism should involve judicial action, especially in the event of death. He would also like to know whether the legislation to safeguard the standards of traditional Chinese medicine, due to be enacted in 1999, had in fact been passed and come into effect.

40. Although, in his experience, most Chinese smoked, the report was silent about measures to combat tobacco and alcohol addiction, which posed a serious health hazard to young people. Were the authorities aware of that threat? And did they have any plans to discourage youth from adopting those habits? On the subject of environmental safety, he asked whether there was any mechanism for cooperation between the HKSAR and the Chinese Government in anti-pollution measures when a waterway's source was located on the mainland.

41. While the International Labour Organization had included statistics on Hong Kong in its latest report, there were none in UNICEF's State of the World's Children 2001 report. Had the authorities taken steps to ensure that HKSAR statistics appeared in all special United Nations studies? Such information would, of course, appear under the heading "China", but would reflect Hong Kong's special status through separate disaggregated statistics.

42. Mr. HUNT said that, while not wishing to encourage complacency on the part of the authorities, he thought that the housing situation had improved. However, the problem of "roof-dwellers", which was a human rights issue, still persisted. He asked the delegation to state the number of persons still living on the roofs of buildings and what broad policy the authorities had in mind. Also, since poverty was a multidimensional and multisectoral issue, it might be helpful if the authorities established a cross-sectional, interdepartmental unit to implement the measures referred to in the Chief Executive's policy statement.

43. With evidence that the number of mentally disabled people was on the increase, the Government's strategy for addressing the problem appeared to be reactive and to lack cohesion. He recommended a review of the relevant legislation and a thorough overhaul of the strategy so as to determine the number of people affected, where they lived and whether they had equitable access to medical care. Lastly, could the delegation specify what factors beyond the Government's control militated against the attainment of full literacy in the foreseeable future, as claimed in the written replies?

44. Mr. MALINVERNI said that, according to certain NGOs, the mentally disabled were administered old drugs that had certain side effects. The Government had announced the establishment of a new-drugs pilot programme for 2,500 patients. He asked what criterion was used in their selection and why the programme was being implemented only gradually. Complaints had been lodged with the Equal Opportunities Commission (EOC) regarding the right of the mentally disabled to challenge their internment in the courts. Were they fully informed of that right? He asked how the Government was tackling the increase in the transmission of HIV/AIDS through heterosexual intercourse and from mother to child, and whether there was an effective code of conduct to ensure that children suffering from AIDS were not excluded from ordinary schools.

45. Ms. BARAHONA-RIERA, referring to the Chairperson's earlier statement that the newly formed Women's Commission should not be merely decorative, said it should be an agent of genuine change with regard to discrimination of any kind. She asked what action was being taken to change the gender-discriminatory content of textbooks and ensure equal access for girls and boys to all levels of education. Genuine gender equality could be attained only through legislative and judicial action. For instance, what legal protection concerning alimony and housing was given to wives and families of men who took up employment abroad and set up house with other women? The Women's Commission and the education bodies should also make strenuous efforts to change cultural attitudes and enhance the image of women at all levels so as to combat sexual harassment in the workplace.

46. Ms. CHUNG (China: Hong Kong Special Administrative Region) said that the discrepancy between the Government's and NGOs' figures on households living in temporary, inadequate or non-self-contained accommodation and on rooftops had arisen because the NGOs had used a variety of sources and had rounded off the figures upwards. Her information was that there were 132,000 households, or 6.3 per cent of the total, in that situation - a great improvement over the 1999 figure of 10 per cent, if the continued wave of immigration to the HKSAR was taken into account.

47. The Government had embarked on a comprehensive squatter-clearance campaign, the most recent clearance had taken place in the middle of Kowloon, leaving approximately 100,000 squatters still on government land, in addition to the 120,000 on private agricultural land in the New Territories. Squatting resulted from the interplay of a variety of social problems, but squatters were encouraged to register for low-cost housing. Any one person claiming to be homeless was given accommodation, since it was the Government's policy that no person should be made homeless because of squatter clearance. Should land need to be cleared for development or owing to the threat of a landslide, those affected were immediately housed. Some 12,000 squatters had already benefited from that scheme.

48. Rooftop dwellings were illegal structures permitted by unscrupulous landlords, and those living in them were also encouraged to register for public accommodation. In the event of a fire hazard or other danger, the structures were cleared and the inhabitants rehoused. Registration forms were even issued by mail, and promotional material was available. The Government had committed itself, after its massive clearance in 2001, to clearing a further 700 such structures each year thereafter. According to a sample survey, there were an estimated 9,000 households living on rooftops.

49. Replying to a question from Mr. Malinverni, she said that housing for the elderly was tackled in a variety of ways: priority access to public housing, improved design to meet specific requirements and shorter waiting periods. Persons over 60 had been promised rental accommodation by the end of 2003 if they registered by 31 March 2001. The three-year waiting period for people living alone would be reduced to two years by 2005, as well as for unrelated elderly persons wishing to live together in hostels or self-contained accommodation, and families living with, or wishing to live close to, elderly relatives. In addition, there was not only a loan scheme for the elderly, but also a subsidized purchase scheme.

50. Ms. WONG (China: Hong Kong Special Administrative Region) said the authorities were greatly concerned about Hong Kong's needy population and heeded NGO recommendations. Self-reliance and self-betterment were treasured values in the society. The idea, therefore, was to create an environment conducive to fair competition, where advancement was achieved through the development of talents. It was important to adhere to market principles without any barrier to access to jobs, thus enabling people from all walks of life to aspire to better jobs and benefit from the fruits of economic growth. The authorities provided training for transition from a service-based to a knowledge-based economy. Economic and social policies responded to changing economic circumstances, and the needy were assisted with housing, education and medical attention. As Mr. Hunt had noted, the Government had injected HK$ 2.7 billion to fund a job-creation, skill-upgrading, and retraining package. While social security existed as a safety net, it was intended to help people regain their self-reliance and rejoin the mainstream.

51. There was no scientific method for drawing a poverty line, which was a controversial issue both locally and internationally, and involved subjective value judgements. Nor was its existence a prerequisite for public assistance to the needy. In 2001/02 a large proportion of total expenditure would go to education, health and welfare, including social security. Each programme had specific criteria for determining eligibility. Income was not necessarily the most effective indicator of living standards. In any event, Hong Kong would closely monitor the current arrangements to determine whether they still worked effectively and would heed the views of the Committee and the local community. While the authorities would consider Mr. Hunt's suggestion of a poverty commission, each bureau and department had responsibility for its programmes and its own advisory board and committees to ensure their efficacy.

52. Even developed countries had some degree of income disparity, which could not be solved through income redistribution. The focus was not on eliminating the wealth gap, but on creating an environment conducive to escape from poverty. Over the past decade there had been a substantial increase in the income of all groups, even the poorest, accompanied by considerable upward mobility.

53. As had been suggested, statistics on the mentally disabled would be closely monitored in order to match services to needs. With NGO assistance, the authorities were already addressing the important task of helping reintegrate former psychiatric patients into the community, providing them with the medical and rehabilitation assistance needed for their maximum physical, mental and social development. Additional funds had been invested for the procurement of new psychiatric drugs, the Mental Health Ordinance had been reviewed, and a territory-wide campaign had been launched in April 2001 in support of the relevant World Health Organization policies. Hospital staff apprised patients in writing of the pertinent provision of the Ordinance under which they had been admitted, and of their right to apply for discharge and to seek a review of their case by the Mental Health Review Tribunal.

54. Ms FUNG (China: Hong Kong Special Administrative Region), responding to the question on the number of HIV-infected persons or AIDS patients given in the report, said that the figures were believed to be fairly accurate since they had been produced by the Department of Health under a voluntary reporting scheme set up in the 1980s. The treatment of such patients included strategies for the provision of prevention and health promotion programmes, the

delivery of care to people living with HIV/AIDS, the maintenance of an efficient surveillance and control mechanism, and community involvement in HIV/AIDS prevention. Similarly, the Department of Health had set up an AIDS counselling service for voluntary testing and advice to patients. In 2000, over 1,200 people had used the free service, which was supplemented by an AIDS hotline that received about 5,000 calls per month. The Social Hygiene Service of the Department of Health provided voluntary HIV testing through a network of clinics, eight for males and eight for females. In the public sector, a clinical HIV/AIDS service was provided by the Department of Health and the hospital authority. In 1999, an integrated treatment centre had been set up in Kowloon Bay to enhance the clinical HIV programmes in operation. Currently, about half of all reported cases were under the care of the public service.

55. As to the attempts made to reduce the transmission of HIV infection from mothers to children, the Government would introduce a universal voluntary screening programme for all pregnant women later in 2001. The policy for integrating HIV-infected children into the school system was governed by the principles of non-segregation and non-discrimination. AIDS-related education was promoted through its inclusion in sex education programmes and other learning activities where emphasis was laid on the routes of transmission and the fostering of supportive attitudes.

56. The question of measures to deal with medical accidents and complaints, and the possible separation of investigation from prosecution in such cases, was being addressed by the HKSAR Government. In the report, mention was made of consultations on overall health-care reforms. A feature of those reforms was a proposal on how to deal with medical complaints and the separation of functions.

57. The legislation on Chinese medicine mentioned by Mr. Ceausu had been enacted in July 1999 in the form of the Chinese Medicine Ordinance. The instrument provided a regulatory framework for the practice of Chinese medicine and the use, marketing and manufacture of traditional Chinese remedies in Hong Kong. In addition, the Chinese Medicine Council had been established to devise and implement the regulatory controls established in the Ordinance.

58. Mr. ALLCOCK (China: Hong Kong Special Administrative Region) said that his Government completely endorsed the comments made by Mr. Ahmed regarding the importance of the rule of law and the fact that the courts played a pivotal role in deciding human rights issues in Hong Kong. The Basic Law stated that the power of final adjudication in Hong Kong was vested in the courts of the Special Administrative Region.

59. As to the recent disappearance of Hong Kong-based scholars, attempts had been made to ascertain their whereabouts on the mainland. Initial problems had been experienced in obtaining information on the residents concerned, since regional and city authorities had particular powers of arrest and detention. The Security Bureau had therefore negotiated with mainland authorities to establish an agreed system of notification in the case of detention by public security and customs authorities on the mainland. Since the system in place was not fully comprehensive, efforts would be made to consolidate it. Under the current system, once the Hong Kong authorities were aware that any HKSAR residents had been detained, assistance was granted to

their relatives in arranging visits. In cooperation with mainland prosecutors, work had been completed on the publication of the relevant laws on powers of detention and trial procedures on the mainland and in Hong Kong. As a result, relatives might challenge unlawful detention where appropriate.

60. Unfortunately, constraints still applied in that according to the relation to the "one country, two systems" principle neither the mainland nor Hong Kong was supposed to interfere in judicial processes involving persons detained on the other's territory. Thus, the overall policy of the Hong Kong authorities in relation to the detention and prosecution of suspects on the mainland was governed by the principles of non-interference and assistance to relatives.

61. Mr. LAM (China: Hong Kong Special Administrative Region), answering Mr. Marchán-Romero, said that community information technology centres had been set up for disadvantaged groups, notably housewives and other women. Efforts had also been undertaken to make government networks accessible to disabled persons, especially the visually impaired and blind.

62. As to the rights of indigenous women to build village houses, that practice was traditionally confined to males since, upon marriage, females normally moved out of their own villages and therefore no longer required their own housing. With tens of thousands of pending applications by men for land, the process of rapid development and population increases meant that such land was in short supply. Although gender equality was now high on the agenda of the Hong Kong authorities, the traditions governing the issue of village land were not easily overcome.

63. Responding to Mr. Texier, he said that since the previous report legislation had been passed requiring licensing of "cage homes". Many such homes had been made much safer, while 30 had in fact been closed and their inmates rehoused. Nevertheless, some people wished to stay in their homes for work reasons or because they had many friends in the area. They could not be moved by force so the Government was obliged to make the homes as habitable as possible. The matter was being kept under review.

64. As to Falun Gong, there was no question of infringement of the religious freedom, enshrined in article 141 of the Basic Law. As long as Falun Gong remained a legal body and acted within the law, its activities would continue to be respected. Certain members of the public did, however, consider that Falun Gong was merely exploiting Hong Kong's political freedoms to achieve its aims.

65. As to the rights of women whose husbands had set up second families on the mainland, bigamy was a crime under both the mainland and Hong Kong law. The question was more one of males relinquishing their financial responsibilities. That complex social problem was not covered by any natural or legal measures, and was an undesirable phenomenon resulting from the fact that men found it difficult to marry in Hong Kong or that women from the mainland were attracted by the greater wealth of males from Hong Kong. It was difficult to enforce any law in that regard, and the matter would require public education.

66. Regarding gender equality, attempts had been made to avoid a conventional image of "women at home" in school textbooks. There was, however, still room for improvement and gender equality must be a key consideration in the reform of the school curriculum currently being conducted. On the subject of access to schools, the Equal Opportunities Commission was currently taking legal action against the authorities for not granting access to schools at the same age for boys and for girls. The reason for that was not in fact gender discrimination but simply that boys suffered if they were offered access to schools at the same age as girls.

67. Concerning the environment, cross-border forums were being set up to coordinate environmental activities between the mainland and Hong Kong. Most of Hong Kong's water was supplied from the mainland, where efforts were made to keep natural resources as clean as possible with the assistance of loans from Hong Kong. Negotiations were also conducted on air pollution, which was a highly complex issue given the different levels of economic development in the two areas. Above all, a strong will existed for a joint approach to environmental issues.

68. Regarding literacy, the large influx of immigrants from the mainland meant that it was very difficult to apply any rules as to their levels of educational achievement. However, every effort was being made to ensure 100 per cent literacy for all such persons. In answer to Mr. Ceasu's question on tobacco control, the Hong Kong Government had called for all people to stop smoking and the numbers of smokers had fallen consistently. Problems did still exist, however, since young people, especially girls, saw smoking as a sign of maturity and style. Attempts were being made to tackle the problem through education and publicity, and legislation would be introduced to try to reduce the cost for society as a whole.

69. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), expanding on the subject of women from Hong Kong whose husbands set up a second household, said that according to Hong Kong law women could initiate proceedings to ensure their personal maintenance and that of their children, and to protect their right of residence in the matrimonial home. A draft law had just been approved by the National People's Congress making both bigamy and cohabitation outside marriage illegal. On the subject of the allocation of school places, legal proceedings were under way against what were considered to be discriminatory practices. It was not, however, a question of allocating more places to boys than to girls but one of access based on ratios of boys to girls in particular catchment areas.

70. Mr. TEXIER noted a discrepancy in the figures provided regarding cage homes. According to Government statistics, in June 1998 101 such dwellings had existed, housing 2,300 people. Figures provided by social workers and NGOs, however, indicated that at least 10,000 people lived in cage homes. The answer provided, to the effect that the authorities had been forced to verify that conditions were acceptable in certain homes while others had been destroyed, had not been very satisfactory. The Committee had asked for the complete elimination of cage homes, which were incompatible with recognized standards. Had the content of the Committee's General Comments Nos. 4 and 7 been taken into account in the rehousing of squatters? In other words, had it been done in genuine consultation with affected persons and groups.

71. Mr. LAM (China: Hong Kong Special Administrative Region) said that some people continued to live in shared accommodation and that inadequate housing continued to exist since conditions were so cramped. Similarly, people continued to live in cage homes (bedspace apartments) despite the Government's efforts. New homes could not be built in the old urban areas where certain people wished to continue living despite the deplorable conditions. It was the Government's duty to ensure that residents were safe from fire and other hazards however unsatisfactory the conditions. The elderly could, if they so wished, be rehoused relatively quickly, within two to three years. The complete elimination of cage homes was the eventual aim, but individuals' freedom of choice must be respected above all else. As to the consultations on clearance operations, the process had been one of patient dialogue and it had become clear that most people wanted to remain as close to urban areas as possible. Forced rehousing was currently very rare.

72. Mr. PILLAY said that no response had been provided on the question of the delegation's feelings towards the Committee's recommendations. Did Hong Kong think that all or only some of those recommendations should be implemented?

73. Mr. LAM (China: Hong Kong Special Administrative Region) said that the three meetings with the Committee had been very positive and had provided food for thought. The Committee's recommendations had been taken very seriously and the Government of the HKSAR had made an explicit commitment to the Covenant. In accordance with its obligations, it undertook "to take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant". The Committee's recommendations were an important part of the gradual realization of such rights. Though it was a prosperous society, Hong Kong was faced by a large number of social and economic constraints, but the gradual process in question was nevertheless under way on many fronts. Hong Kong was a self-made community which had moved forward despite its economic and social hardships, and through the strict adherence to the principle of the rule of law, the creation of a level playing field for economic policies, and very humane social policies which took account of the needs of disadvantaged sectors. No other country was able to provide subsidized housing for half its population while retaining such a low rate of taxation. All its citizens had free access to health care at a cost of less than US$ 10 per day. Investment in education had increased by 43 per cent in the past three years and efforts would continue to try to bring everyone up to the same level of development. Its mature and self-critical approach was an integral part of its social and political system where corruption and other forms of abuse were minimized.

74. The CHAIRPERSON thanked the delegation for the assurances provided on the status of the Covenant and the Committee's recommendations.

The meeting rose at 1 p.m.